



PUBLIC SAFETY COMMITTEE

COMMITTEE MEETING

~ MINUTES ~

Tuesday, December 3, 2019

12:00 PM

Sullivan Chamber

Call to Order

Attendee Name	Present	Absent	Late	Arrived
Craig A. Kelley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Jan Devereux	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Dennis J. Carlone	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sumbul Siddiqui	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Timothy J. Toomey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

The Public Safety Committee will meet to discuss the following policy order: An amendment to Chapter 2.128 Surveillance Ordinance.

Councillor Kelley called the meeting to order at 12:05 PM.

Councillor Craig Kelley 0:25

Alright everyone, sorry for being late. My bicycle lock froze. So, we're adjusting. The call of the meeting: This is a Public Safety Committee meeting and we are meeting to discuss the following policy order an amendment to chapter 2.128 Surveillance Ordinance and that the order asked for the Public Safety Committee to have a hearing. You should have a piece of paper titled Public Safety Committee on the front and then on the back there is a proposed new amendment. This is a meeting of the Public Safety Committee. Which is not at all the same thing as the Ordinance Committee. So, at some point, this goes, arguably to the Ordinance Committee, and then that committee will decide whether they want this to move forward and they do that with a five person vote or not. So if we could just go around the table and introduce ourselves. My name is Craig Kelly. I'm the chair of the committee.

Mark Gutierrez 1:26

Mark Gutierrez, council aid.

Emiliano Falcon 1:30

My name is Emiliano Falcon. I'm from the ACLU of Massachusetts.

Councillor Dennis Carlone 1:34

Dennis Carlone, City Council.

Councillor Sumbul Siddiqui 1:36

Sumbul Siddiqui, City Council.

Branville Bard, Police Commissioner 1:40

Branville Bard, Police Commissioner.

Nancy Glowa, City Solicitor 1:42

Nancy Glowa, City Solicitor.

Joe Barr, Director of Traffic, Parking and Transportation 1:50

Joe Barr, Director of Traffic, Parking and Transportation.

Will Durbin, Chief of Staff to Mayor McGovern 1:53
Will Durbin, Chief of Staff to Mayor McGovern.

Vice Mayor Jan Devereux 1:56
Jan Devereux, Vice Mayor.

Anthony Wilson, City Clerk 2:00
Anthony Wilson, City Clerk.

Councillor Craig Kelley 2:05

And this meeting is being recorded. There are members of the public, I think what we will do is we'll hear from the proponent which is sort of the ACLU. They don't specifically... Will wants to go first. So I guess we'll hear from Will first who's here on behalf of the mayor, as well as himself because he's interested in this issue. Then we'll hear from the ACLU. We will ask clarifying questions. We will open up for public comment. And then when public comment is over, we can have a discussion about whether we think this is what needs to go forward or if it should be modified or whatever. Okay. That being said, Will.

Will Durbin, Chief of Staff to Mayor McGovern 2:43

Thank you Mr. Chair, and thank you for allowing me to speak on behalf of Mayor McGovern who is unable to attend today's hearing due to illness.

When the Council passed the Surveillance Ordinance in December of 2018, it was with the goals of safeguarding the liberties and free exercise of the rights Cambridge residents have come to enjoy, and to create as transparent a lens as possible into the emerging technologies that we are coming to rely on in the modern age. We cannot foresee the evolutions of these technologies, or imagine all the ways in which a bad faith actor might use data collected for seemingly benign purposes to erode a person's right to privacy, so the current Surveillance Ordinance in effect today requires that the public be made fully aware of municipal uses for surveillance technologies, and to give consent when the public's eye is turned inward onto itself.

Even with the current surveillance ordinance, the City would be required to submit an impact report and seek the Council's permission before using or acquiring facial recognition technology, so you may well ask yourselves why the petitioners thought it necessary to amend the ordinance with the text under consideration today. In just a moment, I will turn things over to Emiliano Falco to explain the broader dangers which facial recognition technology pose to a free and independent people, and to underscore how a frequently inaccurate technology discriminates against those which it surveils, particularly women of color.

I wish to only add here on behalf of the Mayor that the unregulated and intrusive use of facial recognition technology is so onerous to the idea of a free republic, so intrusive to our daily lives and expectations of due process, and has been shown by other governments to be so menacing and intimidating to our cherished notion of free assembly, free speech, and freedom of thought that the Council is right to erect the further barrier that we seek with the amendment before you today. Before some future Council wishes to authorize this most intrusive of surveillance technologies, they will have to go through the same process we are engaged with today, hear the public, and consider amendments through a lengthy amendment process.

So at this point, I'll turn things over to Emilio.

Emiliano Falcon 4:57

Thank you, Mr. Chair. Good morning.

My name is Emiliano Falcon. I am the Policy Counsel for the Technology for Liberty Program at the ACLU of Massachusetts. On behalf of the ACLU and our more than 15,000 members and supporters in Cambridge, I submit this testimony in strong support of the ordinance introduced by Mayor Marc McGovern and Councilors Craig Kelley and Sumbul Siddiqui to place a ban on the municipal government's use of face surveillance technology.

Face surveillance technology poses unprecedented threats to civil rights, civil liberties, and open, democratic society. Numerous studies have shown the technology is inherently racially biased. The technology poses particularly severe threats to the rights and liberties of immigrants and communities of color. Unchecked, this technology can be used by government agencies to conduct the mass tracking of people in public spaces. Instead of accepting that technologies like face surveillance will determine the boundaries of our rights, we must chart an intentional course into the 21st century, maintaining firm democratic control over our society and our lives. To protect residents now and into the future, the City of Cambridge should join San Francisco, Oakland, Berkeley, and Somerville in taking action to prohibit the use of face surveillance technology by the local government.

What is face surveillance technology, and how can it be used? Face surveillance technology uses algorithms designed to analyze images of human faces. In one of its forms, a computer program analyzes an image of a person's face, taking measurements of their facial features to create a unique "faceprint." Face surveillance algorithms then use these faceprints, in combination with databases like the driver's license system at the Registry of Motor Vehicles and surveillance camera networks, to identify and track people en masse, usually without their knowledge or consent.

Some companies are also selling so-called "emotion detection" systems, which they claim can determine whether someone is happy, sad, honest, or deceitful. Research from experts at Northeastern University has demonstrated it is not possible to discern how someone is feeling by looking at their face. But companies are nonetheless selling these tools across the world.

Face surveillance as currently used is unregulated, biased, and harmful to immigrants, people of color, and privacy. Face surveillance is entirely unregulated in Massachusetts. Nonetheless, the spread of this technology is occurring in the dark, absent public debate or democratic oversight. Government agencies are adopting it despite the absence of privacy regulations, the technology's inaccuracy, and the threats it poses to free and open societies. Face surveillance is racially biased. Among other issues, facial recognition technology is not always accurate—despite what you may have seen on television shows like CSI. And these inaccuracies are more likely to unfairly harm people of color and other oppressed groups. For example, MIT researchers here in Cambridge found that face recognition software sold by prominent technology companies misclassified Black women up to 35 percent of the time. Another study found that so-called "emotion detection" software inaccurately classified Black men's faces as more angry and contemptuous than white faces, even in pictures where all the men are smiling. No Cambridge municipal department should use technology that is inherently racially biased. Face surveillance technology harms immigrant families. The Trump administration's vicious attacks on immigrant communities have made immigrants fearful of engagement with public institutions, including schools and local police. The use of face surveillance systems would further chill immigrant participation in public life because the technology can be used to track where people go, and when, in real-time and retroactively. A ban on the use of face surveillance will ensure immigrants in Cambridge are not tracked or catalogued as they move through public space or public institutions. Face surveillance is a threat to Cambridge residents' civil rights and civil liberties. Especially concerning is how this technology affects First Amendment rights and freedoms. If the government can track everyone who goes to a place of worship, a political rally, or seeks reproductive medical care or substance use treatment, we lose our freedom to speak our minds, freely criticize the government, pray to the god we want, and access healthcare in private. The authoritarian government in China is deploying face surveillance in that country to control and oppress people; indeed, as academics have observed, face surveillance technology is the perfect tool for social control. Cambridge must chart the opposite course, to protect and defend privacy, civil rights, and open society today and for future generations.

Today, Cambridge has a critical opportunity: Your City can pump the brakes on the spread of this dangerous technology, before it is adopted and used to track Cambridge residents and visitors. The Ordinance presented by Mayor Marc McGovern and Councilors Kelley and Siddiqui will protect the people of Cambridge and free and open society and, at the same time, protect City employees.

First, the Ordinance before you amends the City's surveillance ordinance to ban the City of Cambridge from obtaining, retaining, requesting, accessing, or using either face surveillance technology or information obtained from it. Second, it provides that the inadvertent or unintentional receipt, access of, or use of any information obtained from face surveillance technology will not be a violation of this ban if the receipt, access of, or use of such information was not requested or solicited; and such receipt, access, or use is logged into the Annual Surveillance

Report. This language strikes the right balance between protecting Cambridge residents and allowing Cambridge City departments, including the Police Department, to conduct normal business without unnecessary interference. Ultimately, faced with the question of whether Cambridge should pass this ban, Councilors ought to consider what kind of community they want to foster into the 21st century.

Constant surveillance doesn't just harm our collective rights and freedoms— it also has adverse effects on health, well-being, and community trust. Surveillance increases not only our fears and uncertainty but also personal anxiety. Privacy advocates have long warned about the psychological consequences of being watched and observed by unaccountable, faceless entities.⁶ Face surveillance magnifies these concerns and extends them into a truly new and frightening territory by totalizing the surveillance of our movements in public space.

Cambridge is the most innovative city in Massachusetts. Approving this ordinance will send a message to the rest of the state, country, and world that civil rights and civil liberties are a priority in the digital 21st century, and show that Cambridge is leading the way. We strongly urge you to support this critical and commonsense proposal. The ACLU looks forward to serving as a resource to the City and the Council throughout this process, so please don't hesitate to contact me or Kade Crockford if you have any questions or seek further information. Thank you very much.

Councillor Craig Kelley 13:48

Thank you, Emiliano. Now, if you haven't noticed the text of the proposed legislation is on the backside of the document that says Public Safety Committee it is very, very short. Does anyone have any clarifying questions for Emiliano? Okay. Seeing Vice Mayor.

Vice Mayor Jan Devereux 14:10

Thank you for your statement. I also read an editorial that Carol Rose, who I guess is the director of the ACLU Mass wrote for the Commonwealth magazine that made many of the same points and I certainly agree with it. Is there any legislation being considered at the state level? Is this all being done city by city? Is this the wrong kind of time to ask that question. But that's a clarifying question, isn't it?

Emiliano Falcon 14:34

Yeah. Through the Chair. So we are working city by city banning this technology and we are also proposing a moratorium at the state level. We are working with legislators to introduce this moratorium of the use of this technology by the... statewide until there is a special authorization by Beacon Hill that has protections and safeguards for the use of this technology. But yes, we're working to pass a moratorium on the state level until it's regulated.

Vice Mayor Jan Devereux 15:13

And would that apply to the RMV? Because in Carroll Rose's editorial, she said that the RMV has been using this technology since 2006. And that they are actively matching driver's license photos and sending them to law enforcement.

Emiliano Falcon 15:29

Yes.

Vice Mayor Jan Devereux 15:30

So I mean..

Emiliano Falcon 15:31

Yes, the moratorium will impact the RMV use of the driver's license database. So if the moratorium passes, they will not be able to do that anymore.

Vice Mayor Jan Devereux 15:42

Do you have any sense of when that moratorium could pass or if it would pass?

Emiliano Falcon 15:47

So... the hearing was a month ago. So we are working to see if it can pass this session or if not the next one?

Vice Mayor Jan Devereux 15:56
Okay,

Emiliano Falcon 15:57
But we hope it passes. Thank you.

Vice Mayor Jan Devereux 15:58
Yeah. Thank you.

Councillor Craig Kelley 16:01
Other clarifying questions? Councillor Siddqui.

Councillor Sumbul Siddiqui 16:04
Just to add. Vice Mayor Devereux, one of the sponsors is Rep. Rogers... of that bill and it's a Senator Creem, but I can, if you want, I can forward you the the bill.

Councillor Craig Kelley 16:21
Other questions? Okay, I'm seeing none. Any comments from city staff on this?

Branville Bard, Police Commissioner 16:32
Through the Chair. So, from public safety standpoint, I just like to point out the Cambridge Police Department, we don't have facial recognition technology, have no desire to acquire that technology. Personally, I can support a ban of the technology. However, I would think that that ban should come with very limited exceptions. I think if you can think of a scenario where using the technology could be helpful, then you might want to guard against a complete and total ban of that technology. Obviously, constant surveillance is not something that I'm supportive of. But limited use in a very specific set of circumstances. I think that you can see a scenario where the technology could be useful. Other than that, yeah, I can support a band of facial recognition technology.

Nancy Glowa 17:36
Thank you, Mr. Chair through you. We don't have any concerns from a legal point of view as far as the way it's... the concept, but I would add that in keeping with what the Commissioner just said, because it is, in fact cumbersome to go through the amendment process, I would just offer the possibility for the committee and the council to consider having an exception process whereby if the police department for example, thought there was some unique use that would be appropriate in some particular circumstance, then that department or the city manager could bring it to the Council for consideration. So there might be some sort of an exception if it's brought to the Council's attention before such use and that my only other comments on the actual prohibition language are my concern about staff inadvertently or unintentionally receiving such information. So I would suggest in "A" where it talks about it would be unlawful for city staff to obtain, retain, request, access or use that we put in there the intentional language that is included further down. And in "B" where it says the inadvertent or unintentional receipt, access of or use would not be a violation so long as the city staff did not request or solicit etc. I again think that there, adding the word "unintentional" would be helpful to clarify that... you know, let's say you're on a computer and you go somewhere and something pops up. You didn't intend to do that but perhaps you clicked a button that requested that page to open maybe that's not a great example but... so just for consideration I wanted to put out those two possible changes as this process continues. Thank you.

Councillor Craig Kelley 19:43
Thank you Ms. Glowa. I think I got the first... the second change which would be to number one under Section B: the city staff did not request or solicit the. And then you're suggesting we insert "unintentional" receipt is that..

Nancy Glowa, City Solicitor 19:59
Sorry, Mr. Chair, are you talking about a or b right now?

Councillor Craig Kelley 20:02
I'm talking about being B.

Nancy Glowa 20:03
So yes, in B(1), I would suggest something like city staff did not intentionally request or solicit. And then I would...

Councillor Craig Kelley 20:13
Okay, and then what was the other suggestion?

Nancy Glowa 20:16
Well, there were two other ones. So the next one was in A, in the second line, it shall be unlawful for the city or any city staff to intentionally obtain etc. So I would suggest adding "intentionally" in those two places.

Councillor Craig Kelley 20:36
Okay.

Nancy Glowa 20:37
And then my other suggestion that I made first, in keeping with what the Commissioner said, was the for the committee to consider the possibility of having some sort of exception process since this is an ordinance and can only be deviated from by amending the ordinance and while I fully appreciate the concern that Mayor McGovern indicated through his Chief of Staff's comments that you want it to be a cumbersome process to allow such use. That if the committee and council did feel that it might ever be appropriate for, let's say the police commissioner, to feel the need to approach the council for a particular circumstance that wasn't previously anticipated, that putting in an exception clause that would allow that city department through the manager to approach the council to discuss that possibility might be worth considering.

Councillor Craig Kelley 21:38
Okay, so I would move that we amend this proposal to include the word intentionally in .075(A) after the section says "city staff to" insert the word "intentionally" and then say "obtain, retain and request". So on that motion to we have any discussion? No. Okay. In favor, aye. Okay.

And then the second motion I would suggest was we moved to amend this on B(1) where it says "city staff did not request" to insert "intentionally" between the "did" and the "not" it would now read city staff "did not intentionally..." sorry, "did not intentionally request". I would put in intentionally between the "not" and the "request". So all in favor of that? Aye. Okay.

So I think that the one I'm not ready yet to propose is the waiver. But we can talk about... Any clarifying questions for city staff before we go to public comment.

Vice Mayor Jan Devereux 22:44
I've already spoken but if Dennis...

Councillor Craig Kelley 22:46
Councillor Carlone

Councillor Dennis Carlone 22:48
Thank you, Mr. Chair and Vice Mayor. So the waiver would be for, for instance, a terrorist might be in the area or missing child, who hasn't been found, for two days? It's that kind of request?

Branville Bard, Police Commissioner 23:05
That exact kind of thing, not where you're, you know, constantly surveilling and tracking movements. But where you have a known suspect or individual, and you're trying to locate that... that identified individual already. Something of that scenario. I hate the jump to the ticking time bomb type scenario, but that os the easiest one.

Councillor Dennis Carlone 23:25

The question then is... that means we have the system. We're just turning it on. Is that correct?

Branville Bard, Police Commissioner 23:37

Not necessarily. It means that we could ask to borrow the technology at that time or use it. Obviously another agency could come in and use the technology and not be encumbered by the surveillance ordinance or the facial recognition ban. But the idea is that if you can envision a scenario scenario where you may benefit from using it then a complete and total ban might not be the remedy. I'm in favor of banning the general use of the technology. But like I said, if you can envision even a scenario where it could be helpful, then that might not be the... the total ban might not be the exact remedy, a ban with very limited exceptions, maybe a better remedy.

Nancy Glowa 24:27

Mr. Chair, if I could just add to that, I mean, the other possibility would be to have an exception for exigent circumstances that would could require subsequent reporting to the council if that were done. So these are just possibilities to allow for a little flexibility if circumstances ever warranted it, but again, just for the committee's consideration,

Councillor Dennis Carlone 24:49

So if I may, Mr. Chair in discussions, either you could be specific; if it's a lost child or indirect... if it's some occurrence that might be planned. But it would be clear, you would come back and say this has been solved. We're no longer doing this and no other information is kept.

Branville Bard, Police Commissioner 25:13

It should be very limited set of circumstances that would allow for an exception to take place. So limited, it should be so limited that it would only occur. And, you know, that once in a lifetime type of event, not something that could be routinely used over and over again as a way to get around the, the ban or the ordinance.

Councillor Dennis Carlone 25:37

All right. Thank you. Thank you, Mr. Chair.

Vice Mayor Jan Devereux 25:41

Yeah, yes through you. Well, doesn't the existing surveillance technology ordinance have an exception for exigent circumstances where you come to the council essentially, and, and can use a surveillance technology for exactly the kind of limited use scenarios you're describing,

Nancy Glowa 26:05

Through you, Mr. Chair. This proposed amendment says notwithstanding any other provision of the surveillance ordinance. That would knock out the exigent circumstance situation. So the answer is no, you couldn't do it under the rest of the provisions of the ordinance.

Vice Mayor Jan Devereux 26:25

So if we were to follow your suggestion, where we created an exception... would simply striking the notwithstanding any other provision clause in that sentence, be sufficient to allow for these exigent circumstance exceptions but also to have a ban in the ordinance so that it's clear that we really don't want face surveillance used, but the exigent circumstances apply.

Nancy Glowa 27:00

Through you Mr. Chair. I think that's an excellent suggestion. I would just want to be able to read it through carefully to make sure that that made sense, but it sounds like it makes sense.

Vice Mayor Jan Devereux 27:10

And may I ask this gentleman here, if that is something that...

Emiliano Falcon 27:15

I would have to study how that would work with the rest of the ordinance.

Councillor Craig Kelley 27:24

So if we were not to waive this... and I'm not saying I'm supporting, waving it, but if we were not to waive it, and there was a crime that happened, and the person is caught on videotape from the store or whatever, and Cambridge Police Department, as part of its investigation, says, well, we could figure out who this person is, if we were able to access some facial surveillance technology and you work to do that. Then you identify the person, then the fact that you did something that we had a law against doing, does that throw that evidence out and then kill the case?

Branville Bard, Police Commissioner 28:17

To you Mr. Chair. That's a legal determination that the court would have to decide in that case.

Nancy Glowa 28:27

Mr. Chair, through you I would add, that is a criminal question. And it would have to be something that people who practice criminal law could advise better on, but I think that's a possibility.

Councillor Craig Kelley 28:42

Okay, yeah. Madam Vice Mayor?

Vice Mayor Jan Devereux 28:43

Is there a difference between facial recognition technology and facial surveillance technology? Because to me, what you're describing is we have a picture, we weren't necessarily... we weren't surveilling because this is essentially... you're describing a private camera like in a store, right?

Branville Bard, Police Commissioner 28:59

Correct.

Vice Mayor Jan Devereux 28:59

So we have those cameras all over the place. Every convenience store has cameras, and they have pictures of people. And then we post those pictures on social media and say this guy just committed an armed robbery. Anybody know him right? That's it. I mean, I'm confused now,

Councillor Craig Kelley 29:14

So maybe Commissioner, you could explain how you might think, are using surveillance techniques such as the cameras at the 7-11, in conjunction with facial recognition software, could be a tool that would be utilized by government.

Branville Bard, Police Commissioner 29:34

So the more likely scenario that I envisioned is that you know that Branville Bard is intent on doing a large number of people harm, but you don't know where Branville Bard is. You have, you know, a photo image of me that you could apply to a database or two active cameras and perhaps pinpoint my location and thereby, you know, stop me from bringing harm to a large number of folks. Or a mass casualty incident has occurred, you identify this guy's image is the perpetrator. And now you want to also apply that image of me to a database to look backwards to see who, who I am. If that makes sense,

Councillor Craig Kelley 30:24

That makes sense. I've got actually some really interesting, I think questions about how Facebook and whatnot fit into this. But if there are no more clarifying questions for staff, we can move to public comment. And we've got three people signed up. I think we have plenty of time. So you'll have five minutes, you do not need to use those five minutes. The first person up is Christopher Lucy, go up to the podium. Please make sure the light is on, introduce yourself and where you live, and then you get to speak and I'll do something dramatic to indicate when your time is up.

Christopher Lucy, 107 South Street, Boston 31:04

Okay, there we go. I appreciate the ability to speak to the assembled group today. And my name is Christopher Lucy. I'm not a Cambridge resident. I live in Boston. But I want to applaud the City of Cambridge for having taken a bold step to even consider the idea of surveillance oversight. And this, this is something that most of the development is done in cities like Cambridge. So you're making a strong grassroots statement. And I appreciate that. And I'm sure that we are all aware, we live in a stormy tempestuous world, and that there will be doubts and questions along the way, but I strongly support the initiative to pursue that goal. And I can say in principle, I support this amendment but if there are details that need to be worked out, I'm sure that the city and its representatives are sufficient to be able to handle those details in the best interest of the public and on balance I think this is the right direction for you to head. Thank you.

Councillor Craig Kelley 32:07

Thank you very much the next up is Susan Ringler followed by Saul Taunenbaum.

Susan Ringler, 82 Kinnard Street 32:15

Good afternoon, thank you for all of your time on this snowy day on this important matter. I am generally in favor of the ban on facial recognition technology. I draw to your attention and will leave for the public record a New York Times article just this morning on the front page of facial recognition being used against Uighurs in China and articles being... scientific money being given by institutes in Germany. This is really being... there's really bad stuff happening all over the world and I... we really need to come down on this quickly. Although I am in general in favor I am very concerned that we add the word retain to be as well as "a"... it is unbelievably important that we not retain this data. The way you make a database is by retaining information. No, no, no, do not, do not get Cambridge involved in the retention of facial recognition data absolutely not. I mean it is critical, critical critical. I also... These exceptions about using. What if somebody says, "Oh, I'm not using it, I'm just going to keep it in case it becomes important later." No, we do not want to go down that road at all. We have to be really, really careful. I'm also very much against any exceptions. We have lots of surveillance technology, which is not facial recognition. There's lots of ways of using it. We don't want to go down the facial recognition road. Also just for your information. I just returned from a trip to Europe. I go to Europe frequently and on arriving back in the US, guess what they do? They do facial recognition on every single person. So I am already in the national databases and what if the national database just became available to Cambridge without you requesting it? This is absolutely not where we want to go. The retention and the use have to be banned, it has absolutely got to be banned. Also it is really, really important to recognize that women of color are absolutely not treated properly by this technology. Men of color. It is absolutely not. This technology is... we've got to keep away from it. I'm sorry, but it's really, really important. So no exceptions for the police. Be very careful about adding the word retain everywhere where it is appropriate. We really need to protect ourselves and everybody and this red herring about a child. We shouldn't be doing facial recognition on any child. I'm sorry, but I'm absolutely opposed 1,000%. Leave children out of this. Let them be children. Thank you very much for your time.

Councillor Craig Kelley 34:47

Thank you very much. Next up is Saul Taunenbaum.

Saul Taunenbaum, Cottage Street 34:55

Thank you, Councillor. Thank you Councillors for being here and city staff. I'm against the use of facial recognition technology in virtually every circumstance. I came into this room with a theoretical belief that there could be exigent circumstances. But as I've listened to the discussion, every example that has been given has been bad. Just terrible. Lost children? Do even know if facial recognition technology works on children. You know, as the previous speaker said, there are demographic groups who are excluded. I mean, there's probably no database of children. So forget that as an example. Terrorists? That sounds like the exigent circumstances for torture. And they're the same sort of ticking time bomb things that generally rational people agree aren't a good excuse for torture. Why should that be a good excuse for using facial technology? We've had one example of that in the Tsarnaev brothers, people who were recognized by the community instantly and actually should have been recognized by FBI agents. That didn't work very well. Why would we, you know, why would we even think that we should make an exception there for facial recognition technology without any indication that it would work? And lastly, I really doubt the Commissioner meant it this way, but that example of Rambo Bard, who I'd like to meet by the way, that we have live cameras connected so that we could do real time facial recognition, you know, for some suspect.

There is supposition after a supposition there. And I certainly don't want to be living in a city where we could flip a switch and start doing real time facial recognition, you know, on cameras because that is the dystopia of China. So I agree with the mayor's comments through his chief of staff. If there is an exception process, it should be really, really hard. And I would expect the council in those circumstances to be adversarial to the request and not simply get scared by, you know, Rambo Bard who I'm sure is a very dangerous person. But our rights are important too. Thank you.

Councillor Craig Kelley 37:42

Thank you very much. Is there anyone else who has not spoken who would like to speak? Seeing none, I would move to close public comment. Okay, I guess we're back. "Retain". One of the public commenters talked about the need to put retain in the legislation. It is in Section A. The public comment is closed, thank you very much. Notwithstanding any other [sic] will be unlawful for any or... for the city staff to obtain, request, access or use. And that's in A and then in B we have city staffs inadvertent or an unintentional access of or use of any information from facial recognition technology shall not be a violation of the section provided that... It goes on. So we can certainly put retain in to that if the body wants that. So I'll move to put...

Vice Mayor Jan Devereux 38:47

Excuse me, we should probably make it retention. Yeah, I mean, if you're putting it in that first sentence then access...

Councillor Craig Kelley 38:56

Okay? So in between the term or word "receipt" and "access" I'll move that we've put the word "retention", comma "access of"... "retention of" the word. And the solicitor has a comment.

Nancy Glowa 39:15

Thank you, Mr. Chair. I just wanted to note that the the city is still subject to the provisions of the public records laws. So, although we would certainly be able to not disclose any information that the city received or retained as we are required to under the public records law, because of the privacy exemption, if state law says we have to retain something once the city's in receipt of it, I think that that would trump the provisions of a local ordinance. So I am... I can certainly assure the council that the city would do everything I could to not release any such information. I just wanted to note for your information, that we are subject to the requirements of the public records law.

Councillor Craig Kelley 39:59

Thank you. But my understanding is we don't have to call that out. We can still include the word "retention of" realizing that state law trumps local anytime that there's a conflict. Okay, super.

So, with that being said, I think we're on the waiver part, and honestly, I don't like it. I've been probably reading too much about artificial... Councillor Siddiqui?

Councillor Sumbul Siddiqui 40:25

I think... I agree with you. And I agree with the mayor's comments on this. And I respectively see the point of having those circumstances and at the same time, the harm of it is really compelling. And given that we don't... we don't own any technology in the first place. That's an important point, we don't have it and so since we don't have it. I think...

Yeah, I think I'm having a hard time with the waiver. So I'm open to what other of my colleagues say and the ACLU as well, but yeah, I'm torn.

Councillor Craig Kelley 41:15

Councillor Carlone.

Councillor Dennis Carlone 41:18

Well, I've been to China and I was a little stunned by the passiveness of the people. And part of it isn't even the software. At every block and park in Beijing are three policemen, not one, not two, but three, at least in the

downtown area. So that's.... Everybody behaved that I could see. I read... I heard about an event the week before, but it's very minor. So it's a completely different society. The only reason why I think a waiver makes sense as we don't know. We don't know the circumstances and I think that's what they're asking for. I don't want surveillance but in the event of a catastrophe, or something we don't even know, the possibilities there. And the council will vote on it. I... Excuse me, I assume would be a closed door event to talk about whatever the circumstance might be. If it's super important. So I think the option is fine.

It depends on who is on the council and their beliefs. But I don't think anybody in this room is for surveillance beyond the unthinkable. That's my position.

Vice Mayor Jan Devereux 42:40
Councillor Kelley?

Councillor Craig Kelley 42:42
Vice Mayor.

Vice Mayor Jan Devereux 42:47
This is only Public Safety Committee, right. So this... Whatever we refer out of this goes to Ordinance next?

Councillor Craig Kelley 42:54
Now we could pass it at the Council without an Ordinance Committee meeting.

Vice Mayor Jan Devereux 42:54
Oh, we could?

Yes, okay. The Clerk is nodding. Okay, I was thinking would have to go to... So, we could, I think I would be in favor of sending it as is to the Council with... If either the City Solicitor or the Police Commissioner wants to contribute something to accompany it, so that when the full Council discusses it, they have this context. But I feel like there's not really a compelling reason for us as a Public Safety Committee to take that out because it does sort of leave a big loophole that I understand is meant to be a small loophole, but nonetheless, it is a loophole. So I would, I would make a motion to just refer this to the Council with those comments and let whoever is on the council at that point. Make the call.

Councillor Craig Kelley 43:53
Okay, so before we do that, just to make sure that we've done it. I thought it called for a vote on the "retention of" in paragraph B section 1: "city staff did not request a solicit the receipt, access of". And put in between "receipt" and "access" the words "retention of" so on that... Councillor Carlone? Okay, so on that motion everyone in favor Aye? Opposed? Okay. So now that's been amended. Other comments on the exemptions? Emiliano?

Emiliano Falcon 44:32
Well, I would say that we believe that the technology is not ready for prime time. And maybe starting putting exceptions and carving things out local of laws, regulations... And regulations should happen at the state or federal level. That's why we believe that in the cities it has to be banned until at the state level and the federal level, maybe, this technology is regulated. So that's why we're thinking...

Councillor Craig Kelley 45:00
Okay, I have a question for you Emiliano. Which is how under this, how would someone, whether it's a police department or community development or whatever, looking through Facebook, which has a facial recognition aspect, how would that impact their ability to either do their work or inadvertently break the law?

Emiliano Falcon 45:25
Thank you for the chair. I cannot answer the question I would have to see how in that case Facebook is used because Facebook doesn't always use face recognition technology. So that depend on how the social network was used in the

particular case. There are ways that I can think of the police department can still use Facebook without using facial recognition technology. For sure.

Councillor Craig Kelley 45:59
Madam Solicitor.

Nancy Glowa 46:01

Thank you, Mr. Chair, you are sort of touching on an issue that came to us as well, which is under the ordinance. Currently, cameras and buildings are exempt, for example. It's not really clear from this definition, what... Well, if it's an automated or semi automated processes, does that includes still camera photos, and what does it mean to capture information? So, to the extent that this may be different from some of the other provisions of the ordinance that we had understood, were agreeable to the ACLU. It might be helpful if we could talk a little bit offline before it comes to the council just to see if a little bit clearer definition would be helpful because I think that creates a little bit of a gray area and also, as you said about Facebook. You know, there could be some parameters around certain technologies that are in place, out there and used. Maybe that would be helpful for everyone to clarify.

Councillor Craig Kelley 47:07
Emiliano

Emiliano Falcon 47:09

Through the Chair, I would say that there's a difference between the software and the camera. So this is a software, this is the automated or semi automated process. It's the software that is... that can be... that's one of the highest threats of this technology. That is that these software can be embedded into any camera. So the ban is directed to the use of that software and information that can be derived from a software of the like. Right? So the cameras can still be there. The only thing is that we... the city will be prevented from using the footage of this cameras and run all those... all the footage through the technology, through the software. So that's what the definition is... is means, right? It's the software. That the use of the technology itself.

Councillor Craig Kelley 48:11

So let me interject. So Facebook has that software. So say I'm Community Development and I want to figure out how my last outreach went for some retail party or something. What I read this to clearly say is if I am the person at CDD, doing the social media stuff, and I see that Craig Kelly or some Councillor Devereaux or whoever was at that party, because the software that Facebook has is providing that information, then I'm breaking the law. I absolutely am with you on the surveillance part of things and I don't like that and I don't like the idea of waving it. But on the other hand, some of this stuff is so embedded in what we do in just a daily basis, we want to make sure we're not setting up a situation where the well meaning administrator says, "Oh, yeah, that's who was there. Let's send them a note about the next meeting" or something like that.

Emiliano Falcon 49:17

Thank you. And I think that in that case, it would depend if the facial recognition software of Facebook identified you or whoever was in the picture, because sometimes people just tag each other and doesn't use facial recognition technology. So how Facebook facial recognition technology works that one has to kind of... I don't know if... I'm not sure if it's like an opt in or an opt out if Facebook asks you if you want Facebook to use facial recognition technology over your face. So I would say that in that case, if Facebook use facial recognition technology, and then the City use Facebook. And in that case Facebook use facial recognition technology then yes, the city will be prevented from from using Facebook in that particular case. Of course then you have the unintentional and inadvertant received so that might provide a way out. It's hard to say, but we're happy to work. if you want to come up with some language that clarifies this.

Councillor Craig Kelley 50:28

I may be making a mountain out of a molehill here, but when I go on Facebook it identifies people for me without my asking. And I suspect that's the same case with a lot of people.

Vice Mayor Jan Devereux 50:43

Yeah, it will suggest you might want to tag somebody. It recognizes the face and says is this Craig? want to tag him? And then therefore everybody knows that Craig attended that party. Yeah.

Emiliano Falcon 50:56

Yes, but I think that you have to consent into that. If I'm... No?

Vice Mayor Jan Devereux 51:02

You can have settings.

Emiliano Falcon 51:03

I don't have Facebook, so...

Vice Mayor Jan Devereux 51:06

Yeah, I mean, we're allowing ourselves to be surveilled all the time by... Yeah, no, Facebook has settings that you can say anyone can tag you or they have to request permission first. It's a good thing to have. There is also... I wanted to also ask... There are all these doorbells that Amazon sends. The Amazon ring doorbell that takes an image of you and like sends a picture to Craig's cell phone that says, hey, look, Jan is ringing your doorbell you're not home. But now you know, Jan was on your door. And I think those pictures get like, kept by Amazon and probably used for all kinds of things we don't know about. But this ordinance only, like our other one, only protects people against the city using this technology. So all of us are being surveilled voluntarily and involuntarily. It seems like all the time.

Councillor Craig Kelley 51:58

But in your case Which I think is a really good one, when we think about package stuff, so someone walks up to a doorbell or sorry, walks up to a porch, grabs a handful of packages and then leaves. But they are recorded by the ring or some other type of surveillance device. What this ordinance is saying and what I support is, we can look at the... city staff or whoever can look at the pictures and say, do we recognize this person? Does anyone recognize this person? And the answer is no. But what we couldn't do is we couldn't post it on Facebook and see if Facebook suggests the tag for that person because that would be using some sort of facial recognition software, nor could we give it to whoever say the UAC people and have them run it through a database.

Branville Bard, Police Commissioner 52:56

Chair. I think you are conflating issues. We could put that picture on social media and say, does anybody recognize this guy? And that will be completely okay. We're not asking for...

Councillor Craig Kelley 53:07

That is not what I'm saying. I'm saying you put it on Facebook and Facebook says, this person might be such and such who's been tagged elsewhere. I understand you can ask other people if the person is known. But if you put it up on Facebook, and it provides a possible tag, then that's facial recognition software.

Branville Bard, Police Commissioner 53:26

I don't know what those algorithms are and how that comes into play. But I mean, I hate to even keep bringing up the point or the argument because then it makes it feel like that I'm against banning facial recognition software and technology. And I'm completely not against banning it. I think that public safety for police. We prevent crime and protect civil rights and when those two collide, then protecting the civil rights has to carry the day. All technology can be leveraged and abused. Rarely does. The answer exist in... You know, the polar opposites. It is always, mostly always, somewhere in the middle. Here, I think the remedy lies closer to the total ban. But if you can envision a scenario where the technology could be helpful, then I think it's unreasonable to hamstring yourself and to never being able to use that technology. And that's all.

Nancy Glowa 54:28

If I could just add on to that, I mean, this this conversation has raised two concerns. So could there be a way of refining the definition even more to somehow differentiate between using technologies that other entities are already using like Facebook, or software that the city staff is intentionally using? So I don't know if that's a possibility, but that's one thought I have but the other thing I wanted to say is that, as the council knows the council is very

interested in having the city try to enforce the short term rental ordinance. And it's very difficult to enforce ordinances like that, where you're talking about how people are, you know, using their property and in order to enforce ordinances like that ordinance and many other ordinances or laws. The city often relies upon information provided by third parties. And in one of the few cases where the city was successfully able to go after violations of that ordinance. It was because of door bell camera recognition images that were provided to city staff. That city staff was able to use in dealing with the other owners or residents of the property in order to and to leverage that information. So that raises the question if a complainant, a person who's complaining about a violation of some law, brings such an image to the city, would this mean that we would not be able to use that? Because in that situation, for example, in that... doesn't... it that's not completely infrequent that that's how we would get word of things like that. Is that what's intended here because that would be helpful to know and to make sure that the city is doing that deliberately.

Councillor Craig Kelley 56:30

So since you brought up short term rentals, we are we are renting a place in Ripton, Vermont, which has about 1500 people in it. And they require people to place their Airbnb registration number on the site. Cambridge for reasons I cannot explain, does not and that would be one way of addressing that concern. Your larger concern though, I think is if someone comes to the police department, and says, this person took the packages off my porch and I know who this person is because I have them photographed on my ring doorbell. And I ran it through Facebook or some other commercially available database that does facial recognition software, then what this would be saying is the police department cannot act on that information. We can't use it. We can't retain it. We can't share it. We can't do anything on it.

Nancy Glowa 57:31

Mr. Chair, through you. It suggests that to me, so if that's not what's intended, then it could benefit from some clarification and if it is what's intended, then that could have an impact on other enforcement activities of the city and various departments.

Councillor Craig Kelley 57:48

Right for from my point of view, it is what is intended and I would be willing to pay that cost as a society. Vice Mayor?

Vice Mayor Jan Devereux 57:57

Yeah, and given the relatively high false ID thing, I don't really want to enable a whole bunch of amateur detectives by saying, hey, great, I got this fancy doorbell and I got Facebook and I just solved the crime for you. You know, go find this guy and his house. I don't. You know, the other thing about Facebook tagging, though, I believe when you use like, as opposed to a personal account a page like Cambridge police or even some of the candidate pages, for instance, I don't think the tagging works the same way because you aren't friends with somebody you have simply like to page. So in the example that Craig gave about the police department being able to... you wouldn't have that unless, I think it was on a friend. Not that it really matters, but I think we're getting into the nuances of Facebook. A huge rabbit hole.

Councillor Craig Kelley 58:55

If we are talking about surveillance. Yes.

Vice Mayor Jan Devereux 58:57

Yeah. But it is different. There is a different level. For... of privacy, if you can even call it that on Facebook for pages accounts that are sort of the city versus you Craig as a person.

Councillor Craig Kelley 59:13

And we have your motion on the table, which at some point we have to vote on. But I think that illustrates the larger point of... there's a whole bunch of stuff out here that we don't know exists or don't understand how it exists, and it's going to become more stuff in the future rather than less stuff. And I, you know, I'd rather frankly, have the council come back at some point in life and amend the ordinance based on what happens rather than have an exemption now that the council would vote on. So if no one else has comments. The Vice Mayor has a motion on the floor to send

this to the City Council. I guess with no recommendation, as we have amended it, and we have only amended it with, I think, five separate words. There's no waiver at this point in what's on the table.

Vice Mayor Jan Devereux 1:00:07
Why wouldn't we give it a recommendation?

Councillor Craig Kelley 1:00:09
We could. I'm begging that question.

Vice Mayor Jan Devereux 1:00:12
Seems like we are pretty favorable.

Councillor Craig Kelley 1:00:14
Okay. So to send this to the Council with a favorable recommendation. All in favor say aye. Aye. Opposed, nay. This can pass whenever the... Actually, it could be one of our last votes Vice Mayor. My understanding is this can come to the council and be ordained because it's not a zoning provision by a five vote majority on the night that it comes to the council, is that correct? Okay, so 10 days, so maybe we can't make that deadline, but we shall see. Okay, super. Yes, Madam Chair... Madam Solicitor. Whoever you are.

Nancy Glowa, City Solicitor 1:00:58
Thank you, Mr. Chari. I just... since this is going to the council, as amended. I just wanted to raise two other suggestions for consideration. Just while the committee is still here. Would it be helpful in the definition where it says facial recognition technology means an automated or semi automatic... semi automated process? Would it be helpful to say there electronic software or other process to indicate that these are electronic software type programs? That's just one thought. And certainly I can, you know, mention these if and when it comes to the council. But the other thing about the Facebook conversation, would it be helpful to consider at the end of the sentence where it says, you know: "identifying or capturing information about an individual based on the physical characteristics" to add "without that individuals consent". I don't use Facebook either but my understanding is that you agree to Facebook, making your image available for people to tag if you're friends with those people and. So that it's a consensual process by which that information is available. If that's not helpful, feel free to disregard. I just wanted to throw it out there. Thank you.

Councillor Craig Kelley 1:02:18
Comments? Emiliano?

Emiliano Falcon 1:02:21
Yes, I am not sure about the consent. Because most of these systems don't use the consent of the people's faces, like the RMV, for example, you never consent to a use by the RMV of the driver's licenses by law enforcement, for example. And Facebook, I'm not sure how that works either. And a lot of other programs don't require consent actually. That's one of the problems.

And as to their software app, I think that it's automated or semi automated. It's clear that it's a software. I don't if you want to include the word "software", it might confuse? I don't know, I think that automated it, it's clear or semi automated that it involves computer programs and software. So...

Councillor Craig Kelley 1:03:18
Comments? No. Well,

Will Durbin, Chief of Staff to Mayor McGovern 1:03:22
Thank you, Mr. Chair. Just really quickly I wanted to talk about the timeline for the council because the Mayor will be submitting, for next week, a policy order asking that the 23rd be cancelled as a City Council meeting. Which will remove that date as a possible ordination date, but that I believe is the second day of Hanukkah. And we will be submitting a proposal or asking the council to cancel that date.

Keep the 30th, the 9th and the 16th.

Councillor Craig Kelley 1:03:53

The 30th might be a tough one. But I mean, there's no particularly rushed to ordain this. It doesn't have a calendar. Just be kind of fun from my perspective. It may be from Mark and Jan's as well. But I don't see any need to rush it if the calendar doesn't otherwise work for it.

Vice Mayor Jan Devereux 1:04:10

Does it just automatically get carried over? Because it was... I don't know. I mean, I don't see why we wouldn't try to ordain it if we could...

Anthony Wilson, City Clerk 1:04:25

Yeah, so there's so this is not a zoning ordinance. So it doesn't have the same deadlines that a zoning ordinance would have. My understanding is that if you move it out of committee today and it came before the council, ideally on the 9th, but more than likely, probably on the 16th. And then 10 days after whatever date it was before the council, it can be ordained whether it's in this session or the next.

Councillor Craig Kelley 1:04:52

Okay, any other questions or comments? Thank you all for your time. And I imagine we'll see some of you back here shortly.

1. That the Amendment to Chapter 2.128 Surveillance Ordinance Technology be forwarded to the Public Safety Committee for a hearing.

WHEREA S: The City Council passed [Chapter 2.128 Surveillance Technology Ordinance](#) on December 10, 2018, which imposed a requirement that the City Manager seek approval from the City Council prior to acquiring or using certain surveillance technology, including Biometric Surveillance Technology and facial recognition software and databases; and

WHEREA S: Notwithstanding this existing check on the City's authority to acquire and use face recognition technology or data derived thereof, the potential threats to residents' civil rights and civil liberties that are unique to face recognition technology warrant its outright ban; and

WHEREA S: Facial recognition software can discriminate based on classes like race and gender; a 2018 report out of the MIT Media Lab and Microsoft "[Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification](#)" found that while the "maximum error rate for lighter-skinned makes is 0.8%" in commercial gender classification systems, "darker skinned females are the most misclassified group (with error rates up to 34.7%);" and

WHEREA S: The use of face recognition technology can have a chilling effect on the exercise of constitutionally protected free speech, with the technology being used in China to target ethnic minorities, and in the United States, it was used by police agencies in Baltimore, Maryland, to target activists in the aftermath of Freddie Gray's death; and

WHEREAS State Representative Dave Rogers (whose district includes parts of Cambridge) has
 S: filed legislation that would [impose a moratorium](#) on face recognition technology, and as recently as Thursday, July 25, 2019, Representative Ayanna Pressley [introduced a bill](#) before Congress that would:

1. Prohibit the use of biometric recognition technology in public and assisted housing units funded under HUD; and
2. Require HUD to submit a report to Congress that provides analysis on any known use of facial recognition technologies in public housing units; the impact of emerging technologies on tenants; the purpose of installing the technologies in the units; demographic information of impacted tenants, and; the impact of emerging technologies on vulnerable communities in public housing, including tenant privacy, civil rights and fair housing includes HUD federally assisted rental dwelling units;

WHEREAS Three cities have already banned the use of facial recognition technology by
 S: municipal authorities, including San Francisco, Oakland (CA), and next door in [Somerville](#); now therefore be it

ORDERE That the attached amendment to Chapter 2.128 Surveillance Ordinance
 D: Technology be forwarded to the Public Safety Committee for a hearing as soon as possible.

RESULT:	REFERRED	Next: 12/9/2019 5:30 PM
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2. A communication was received from Emilian Falcon of the American Civil Liberties Union of Massachusetts regarding the Face Surveillance Ban

RESULT:	PLACED ON FILE
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